



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

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Mr. W. Edward Bryant
d/b/a Spike's Pumping Service
182 Sherburn Hill Road
Northwood, NH 03261

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
No. AF 02-009**

March 7, 2002

I. Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division ("the Division") to Mr. W. Edward Bryant d/b/a Spike's Pumping Service, pursuant to RSA 485-A:22 and Env-C 603.03. The Division is proposing that fines totaling \$4,000 be imposed against you for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Mr. W. Edward Bryant, is an individual doing business as Spike's Pumping Service ("Spike's" and having a mailing address of 182 Sherburn Hill Road, Northwood, NH 03261.

III. Summary of Facts and Law Supporting Claims

1. Pursuant to RSA 485-A:4, XVI-a, DES regulates the removal, transportation, and disposal of septage through a permit system. Pursuant to RSA 485-A:6, X-a, the Commissioner of DES has adopted Env-Ws 1600 to implement this program.
2. Pursuant to RSA 485-A:22, V, the Commissioner is authorized to impose fines of up to \$2,000 for each violation relating to the septage management program. Pursuant to this section, the Commissioner has adopted Env-C 603.07 to establish the schedule of fines for such violations.
3. Mr. W. Edward Bryant Jr. is a licensed septage hauler in New Hampshire, License No. NHS-178, d/b/a Spike's Pumping Service ("Spike's"). Spike's place of business is located at 182 Sherburn Hill Rd., Northwood, NH ("the Property").
4. Division personnel inspected the Property on September 29, 1999 as a result of a complaint received on September 29, 1999. During this inspection of the Property, Division personnel observed septage solids discharged on the ground.
- 5 Env-Ws 1602 7 defines "septage management" as "the practice of supervising,

controlling, or undertaking any septage activity(ies) regulated under these rules, including transporting, land applying, stockpiling, treating, processing or otherwise disposing."

6. Env-Ws 1602.09 defines septage disposal as "the final discharge, deposit, injection, or dumping, spilling, leaking, incinerating, or placing of septage into or onto any land so that such septage or any constituent thereof may enter the environment, be emitted into the air, or be discharged into any surface water or groundwater. Disposal includes land application."

7. Discharging septage to the ground constitutes "septage management" as regulated by Env-Ws 1600.

8. Env-Ws 1604.02 requires any person who wishes to manage septage to obtain a site or facility permit.

9. At the time of this violation, the Division had no record of a site or facility permit for Spike's or of receiving an application from Spike's for such a permit.

10. On February 28, 2000, the Division issued a Notice of Past Violation noting the violation and acknowledging that Spike's had removed contaminated soils and cleaned up the area where the illegal septage disposal had occurred on the Property.

11. On October 18, 2001, Division personnel again inspected the Property as a result of a complaint received on October 9, 2001. During this inspection, Division personnel observed that septage solids had been discharged to the ground on the Property.

12. On October 19, 2001, Division personnel returned to the Property and took soil samples from the disposal area. At that time, Division personnel requested Spike's to remove the septage solids and contaminated soil.

13. Analysis of the soil samples taken on October 19, 2001 confirmed that septage solids had been disposed to the ground at the Property.

14. On October 23, 2001, Division personnel conducted a third inspection of the Property. During this inspection, Division personnel noted that disposal activities had ceased and contaminated soil had been removed from the Property. Division personnel took soil samples from the disposal area to determine whether all septage solids had been removed.

15. Analysis of the soil samples taken on October 23, 2001 showed the disposal area needed further remediation. The Division requested Spike's to continue clean-up efforts and notified Spike's that the Division would return to resample the soils.

16. On November 7, 2001, Division personnel returned to the Property and took soil samples from the disposal area at the Property to determine whether additional remediation had occurred.

17. The analysis of Spike's November 7, 2001 soil sample indicated that the Property had been remediated and that no further remediation was necessary.

IV. Violations Alleged and Proposed Administrative Fines

1. Spike's has violated Env-Ws 1604.02 by disposing septage to the ground on the property on or about September 29, 1999 without a site or facility permit prior to disposing septage on the Property. For this violation, Env-C 603.06(d) specifies a fine of \$2,000 per violation
2. Spike's has violated Env-Ws 1604.02 by disposing septage to the ground on the property on or about October 18, 2001 without a site or facility permit prior to disposing septage on the Property. For this violation, Env-C 603.06(d) specifies a fine of \$2,000 per violation

The total fine being sought is \$4,000.

V. Required Response, Opportunity for Hearing

Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no later than April 5, 2002 using the enclosed colored form.

1. If Spike's would like to have a hearing, please sign the appearance section of the colored form and return it to James Ballentine, DES Enforcement Paralegal, as noted on the form. A Notice of Scheduled Hearing will be issued.
2. If Spike's chooses to waive the hearing and pay the proposed fine, please have the authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.
3. If Spike's wishes to discuss the possibility of settling the case, please have the authorized representative sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate Spike's interest in settling.

Spike's is not required to be represented by an attorney. If Spike's chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

VI. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Spike's committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules.

Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that Spike's committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that Spike's proves, by a preponderance of the evidence, applies in this case:**

The violation was a one-time or non-continuing violation, **and** Spike's did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Spike's did not benefit financially, whether directly or indirectly, from the violation.


- 2 At the time the violation was committed, Spike's was making a good faith effort to comply with the requirement that was violated.
- 3 Spike's has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
- 4 Other information exists which is favorable to Spike's case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that Spike's committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is Spike's's opportunity to present testimony and evidence that Spike's did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If Spike's has any evidence, such as photographs, business records or other documents, that Spike's believes show that Spike's did not commit the violation(s) or that otherwise support Spike's's position, Spike's should bring the evidence to the hearing. Spike's may also bring witnesses (other people) to the hearing to testify on Spike's behalf.

If Spike's wishes to have an informal meeting to discuss the issues, Spike's must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If Spike's has any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.


COPY

Harry T. Stewart, P.E., Director
Water Division

Enclosure (*NHDES Fact Sheet #CO-2000*)

cc: Gretchen Rule, DES Legal Unit Coordinator
Susan Alexant, DES Hearings and Rules Attorney
Mark Harbaugh, DES Enforcement Attorney